

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHN O'MARA, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. 4:15-CV-01357-AGF
)	
WALLY'S REFRIGERATION, LLC,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' motion (Doc. No. 6) for an order compelling Defendant to account to Plaintiffs, by means of an audit, for all amounts owing to Plaintiffs from April 1, 2012 to date, as a result of delinquent payments to employee benefit funds governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. ("ERISA"). On October 15, 2015, the Clerk of Court entered default against Defendant. Plaintiffs now seek the audit so that they can determine the amount of Defendant's liability. Defendant has not responded to the motion.

Requiring an audit is an appropriate form of relief in an ERISA case for delinquent benefits where the amount of the delinquency is not known. *Int'l Painters & Allied Trades Indus. Pension Fund v. R.W. Amrine Drywall Co.*, 239 F. Supp. 2d 26, 33 (D.D.C. 2002) (stating that an audit "promote[s] the legislative intent of ERISA").


Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' motion for an Order compelling an accounting is **GRANTED**. (Doc. No. 6.)

IT IS FURTHER ORDERED that Defendant shall submit its payroll registers and other documents needed to perform an audit for the period of April 1, 2012 to the present, to an auditor of Plaintiffs' choice, within **30 days** of the date of this Memorandum and Order. Failure to comply with this Order may result in a finding of civil contempt against Defendant and the imposition of sanctions, including a fine and/or incarceration.

IT IS FURTHER ORDERED that Plaintiffs shall effect service of this Memorandum and Order on Defendant by whatever means they believe to be most effective, and shall promptly file a certificate of such service.

IT IS FURTHER ORDERED that Plaintiffs shall have **14 days** after completion of the audit to file a properly supported motion for default judgment. If said motion is not filed prior to **January 4, 2016**, Plaintiffs shall file a status report with the Court on or before that date.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 6th day of November, 2015.